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TO: Mail Stop Appeal Brief - Patents- United States Patent and Trademark Office

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Application No.: 10/740,254

Inventor(s): Hisatoshi (NMN) Masuda *et al.*

Filed: December 18, 2003

Docket No.: AA555C

Confirmation No.: 1912

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1) Amended Appeal Brief in response to the Notification of Non-Compliant Appeal Brief dated August 16, 2006 - 9 pages

2)

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(FAX-USPTO.doc Revised 11/18/2005)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/740,254
Inventor(s) : Hisatoshi (NMN) Masuda *et al.*
Filed : December 18, 2003
Art Unit : 1617
Examiner : Marina Lamm
Docket No. : AA-555C
Confirmation No. : 1912
Customer No. : 27752
Title : PERSONAL CARE COMPOSITION COMPRISING
HYDROPHOBIC GEL

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This amended Appeal Brief is submitted in response to the Notification of Non-Compliant Appeal Brief dated August 16, 2006, and in support of the Notice of Appeal filed via facsimile on July 25, 2006. Timely response to the Notification is provided up to and including September 16, 2006.

The Notification indicated that the originally filed Appeal Brief of July 27, 2006 was defective for failing to comply with one or more of the provisions required under 37 CFR §41.37. Accordingly, Appellants have amended the Appeal Brief to comply with 37 CFR §41.37. Please consider the following Appeal Brief.

REAL PARTY IN INTEREST

The real party of interest is The Procter & Gamble Company of Cincinnati, Ohio.

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RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-14 are pending in the present application. Claims 4-8 and 12-14 have been withdrawn. Claims 1-3 and 9-11 have been rejected. Claims 1-3 and 9-11 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a polyol-in-silicone emulsion consisting essentially of an alkyl dimethicone copolyol having an HLB of from about 4 to about 6, and a molecular weight of from about 10,000 to about 20,000, wherein the alkyl group is made of about 10 to about 22 carbons; and a polyol, wherein the weight ratio of the alkyl dimethicone copolyol to the polyol is from about 100:1 to about 2:8 (specification, page 2, lines 17-23). The polyol-in-silicone emulsion may consist essentially of the alkyl dimethicone copolyol, the polyol, and a hydrophilic skin treatment agent (specification, page 3, lines 16-19).

The present invention further relates to a method of making the polyol-in-silicone emulsion by mixing the alkyl dimethicone copolyol with the polyol at a speed of at least about 1000rpm, and at a temperature of at least about 40°C (specification, page 6, lines 14-18).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- (I) Rejection under 35 USC §102(b) over US Patent No. 6,241,976.
- (II) Rejection under 35 USC §103(a) over US Patent No. 6,241,976.

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ARGUMENTS

I. Claims 1-3 and 9 are not anticipated by Esser because Esser does not disclose several of the present application's claimed elements.

Claims 1-3 and 9 have been rejected under 35 U.S.C. §102(b) as being anticipated by Esser et al., US 6,241,976 (hereinafter "Esser"). Appellants respectfully traverse this rejection. Appellants' Claim 1 requires that the polyol-in-silicone emulsion consists essentially of the alkyl dimethicone copolyol and the polyol (i.e. the polyol-in-silicone emulsion does not contain materials which may interfere with the stability of the polyol-in-silicone emulsion). Esser teaches an antiperspirant composition containing a structured emulsion of a continuous phase and a disperse phase.

The Office Action of July 20, 2006 states that Appellants have not presented evidence that the presence of additional components would materially affect the basic and novel characteristics of the claimed emulsion. Appellants respectfully submit that page 5, lines 19-26 of the specification explain that in order to obtain a stable polyol-in-silicone emulsion, the polyol-in-silicone emulsion preferably does not contain components other than the alkyl dimethicone copolyol, the polyol, and optional hydrophilic skin treatment agents. The specification further explains that materials which may interfere with the stability of the polyol-in-silicone emulsion, and thus the polyol-in-silicone emulsion should be free of, are: other emulsifiers, lower alcohols, oils including esters and hydrocarbon oils, thickeners including fatty acid, fatty alcohol, and waxes, and more than 0.01% water by weight of the polyol-in-silicone emulsifier.

The discussion under Example 2 in Esser indicates that the emulsion of Esser contains materials which may interfere with the stability of the polyol-in-silicone emulsion of the present invention. Esser does not disclose a polyol-in-silicone emulsion that consists essentially of the alkyl dimethicone copolyol and the polyol.

Appellants contend that the Esser reference does not anticipate Appellants' claims. Therefore, Appellants contend that the present invention is novel in view of Esser and that the rejection should be withdrawn.

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II. Claims 10-11 are patentable over Alwattari Esser because the reference does not teach or suggest all of the claim limitations.

Claims 10-11 have been rejected under 35 USC §103(a) as being unpatentable over Esser et al., US 6,241,976 (hereinafter "Esser"). Appellants respectfully traverse this rejection, as the Esser reference does not teach or suggest all of the claim limitations of the present invention, as required in MPEP 2143.03. Thus, the obviousness rejection given in the Office Action does not establish a *prima facie* case of obviousness. Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Appellants' Claim 1 (from which Claims 10-11 depend) requires that the polyol-in-silicone emulsion consists essentially of the alkyl dimethicone copolyol and the polyol (i.e. the polyol-in-silicone emulsion does not contain materials which may interfere with the stability of the polyol-in-silicone emulsion). As discussed above, Esser teaches an antiperspirant composition containing a structured emulsion of a continuous phase and a disperse phase. The discussion under Example 2 in Esser indicates that the emulsion of Esser contains materials which may interfere with the stability of the polyol-in-silicone emulsion of the present invention. Esser does not teach or suggest a polyol-in-silicone emulsion that consists essentially of the alkyl dimethicone copolyol and the polyol. Therefore, Appellants contend that a *prima facie* case of obviousness has not been established, and the claimed invention is not obvious in view of the cited references.

Esser does not teach or suggest all of Appellants' claim limitations. Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

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SUMMARY

In view of all of the above, it is respectfully submitted that the aforementioned rejections are erroneous. The Board's reversal of the rejections is respectfully requested.

Authorization is hereby given to charge the required fees or any additional fees that may be required, or credit any overpayment, to Deposit Account No. 16-2480 in the name of The Procter & Gamble Company.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

Laura L. Whitmer

Typed or printed name

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CLAIMS APPENDIX

1. (Rejected) A polyol-in-silicone emulsion consisting essentially of:
 - (i) an alkyl dimethicone copolyol having an HLB of from about 4 to about 6, and a molecular weight of from about 10,000 to about 20,000, wherein the alkyl group is made of about 10 to about 22 carbons; and
 - (ii) a polyol, wherein the weight ratio of the alkyl dimethicone copolyol to the polyol is from about 100 : 1 to about 2 : 8;wherein said polyol-in-silicone emulsion consists essentially of said alkyl dimethicone copolyol and said polyol.
2. (Rejected) The polyol-in-silicone emulsion of claim 1, further comprising hydrophilic skin treatment agent in an amount soluble in the polyol.
3. (Rejected) A personal care composition comprising by weight:
 - (a) from about 0.01% to about 65% of the polyol-in-silicone emulsion according to Claim 1; and
 - (b) a carrier.
9. (Rejected) The personal care composition of Claim 3 wherein the composition is an antiperspirant, wherein the carrier comprises a thickening agent, and an antiperspirant active.
10. (Rejected) A method of making the polyol-in-silicone emulsion according to Claim 1 comprising mixing the alkyl dimethicone copolyol with the polyol at a speed of at least about 1000 rpm and at a temperature of at least about 40°C.
11. (Rejected) A method of making the polyol-in-silicone emulsion according to Claim 2 comprising the steps of:
 - (a) mixing the polyol and the hydrophilic skin treatment agent; and

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(b) mixing the alkyl dimethicone copolyol with the product of step (a) at a speed of at least about 1000 rpm and at a temperature of at least about 40°C.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.